

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
CASE NO. 4:16-CV-00084-M

JACK HOWARD COX, SR., *Executor of*)
the Estate of Percy Ray Cox, Deceased,)
)
Plaintiff,)
)
v.)
)
AGCO Corp. *et al.*,)
)
Defendants.)

ORDER

This matter is before the court on Plaintiff's Motion to Dismiss Without Prejudice Defendant Prestolite Performance, successor to Hayes Performance Brakes [DE-460] (hereinafter "Motion"). Plaintiff was directed by court order to file a Stipulation of Dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) or else apply to the court for a default judgment on or before Monday, October 5, 2020. *See* Order, DE-456 at 2. One day after this deadline passed, Plaintiff filed the Motion pursuant to Federal Rule of Civil Procedure 41(a)(2). To date, Prestolite Performance has not appeared in this lawsuit. Plaintiff moved for [DE-148] and secured a default judgment against Prestolite Performance [DE-187]. Plaintiff's Motion for voluntary dismissal is governed by Rule 41 of the Federal Rules of Civil Procedure. Under Rule 41(a)(2), pursuant to which the Motion is made, the action against Prestolite Performance may be dismissed only by court order, on such terms as the court considers proper. Defendant Prestolite Performance has not filed any opposition to Plaintiff's motion and the time for response has now expired. Local Civil Rule 7.1(f)(1). In the absence of any reason articulated by Defendant Prestolite Performance that it would suffer prejudice as a result of a voluntary dismissal, the court will not presume the

existence of prejudice. The Motion is hereby GRANTED and all of Plaintiff's claims against Prestolite Performance are hereby DISMISSED WITHOUT PREJUDICE, each party to bear its own costs.

SO ORDERED this the 29th day of October, 2020.


RICHARD E. MYERS II
U.S. DISTRICT COURT JUDGE